

Letter of Findings Number: 04-20110172
Use Tax
For Tax Year 2009

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ISSUE

I. Use Tax—Agricultural Exemption.

Authority: IC § 6-2.5-3-2; IC § 6-2.5-5-1; IC § 6-2.5-5-2; IC § 6-8.1-5-1; [45 IAC 2.2-5-4](#).

Taxpayer protests the assessment of use tax on a Cat Skid Steer Loader.

STATEMENT OF FACTS

Taxpayer is a farmer. As the result of an investigation, the Indiana Department of Revenue ("Department") issued proposed assessments for use tax on the purchase of a Cat Skid Steer Loader purchased in the tax year 2009. Taxpayer protests the proposed assessment of use tax on its purchase of the Cat Skid Steer Loader. An administrative hearing was conducted by telephone and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax—Agricultural Exemption.

DISCUSSION

Taxpayer protests the imposition of use tax on the purchase of a Cat Skid Steer Loader. Taxpayer protests that the use of the Cat Skid Steer Loader was for farm related activities, inter alia, picking up rocks, hauling feed to livestock, and tree limb removal. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

The relevant statutes regarding agricultural exemptions are IC § 6-2.5-5-1 and IC § 6-2.5-5-2. IC § 6-2.5-5-1 states:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for his direct use in the direct production of food and food ingredients or commodities for sale or for further use in the production of food and food ingredients or commodities for sale; and
- (2) the person acquiring the property is occupationally engaged in the production of food and food ingredients or commodities which he sells for human or animal consumption or uses for further food and food ingredient or commodity production.

IC § 6-2.5-5-2 states:

(a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
- (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

(Emphasis added).

Also of relevance is [45 IAC 2.2-5-4](#), which states in relevant part:

...

(c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.

Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.

Ditchers and graders.

Paints and brushes.
Refrigerators, freezers, and other household appliances.
Garden and lawn equipment, parts, and supplies.
Electricity for lighting and other non-agricultural use.
Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.
Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.
Pumps.
All saws.
All tools, including forks, shovels, hoes, welders, power tools, and hand tools.
Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.
Plumbing, electrical supplies, and accessories, pumps.
Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.
Food for non-exempt horses, ponies, etc.
Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.
Field tile or culverts.
Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste). Any replacement parts or accessories for the above items.

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

- (1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
 - (2) Feed and medicines sold for livestock and poultry described in Item (1).
 - (3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.
 - (4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.
 - (5) Milking machines, filters, strainers, and aerators.
 - (6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.
 - (7) Grease and repair parts necessary for the servicing of exempt equipment.
 - (8) Containers used to package farm products for sale.
 - (9) Equipment designed to haul animal waste.
 - (10) Equipment such as needles, syringes, and vaccine pumps.
- (e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.
- (f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

....

(Emphasis added).

Taxpayer claims that the Cat Skid Steer Loader was exempt from use tax under [45 IAC 2.2-5-4\(d\)\(4\)](#), which states that transactions are exempt for "implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments. Specifically, Taxpayer argues that the Cat Skid Steer Loader was used to prepare the ground for planting and as such it was as important to planting a crop as a "plow, disk or field cultivator"; therefore, the Cat Skid Steer Loader should be equally exempt from sales and use tax.

IC § 6-2.5-5-2 states that "transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities. " This statute applies a "dual direct" test in which a purchase for agriculture use is exempt only when the property is directly used in the direct production, extraction, harvest, or processing of agricultural commodities. Therefore, equipment used prior to the start of or after the end of the production, extraction, harvesting, or processing of agricultural commodities is not eligible for the agricultural commodities exemption. This standard is reiterated in [45 IAC 2.2-5-4 \(e\)](#) which states:

The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in

question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

The preparation of the ground for planting, and other farm related activities which taxpayer relates, though important, do not meet the double direct test required by Indiana law. Because the Cat Skid Steer Loader in question was not directly used in the direct production, extraction, harvest, or processing of an agricultural commodity, in all the uses described by the taxpayer, its purchase and use was only partially exempt from Indiana sales and use tax.

However, the Cat Skid Steer Loader in question was used for reasons other than for the purpose of mention above. The Department has found that some of the stated reasons for the utilization of the Cat Skid Steer Loader are exempt for sales and use tax. Under IC § 6-2.5-5-1 and IC § 6-2.5-5-2 exempt uses for which the taxpayer used the Cat Skid Steer Loader include: hauling feed to livestock to be sold, hauling animal waste and seeding of crops to be sold. To the extent that the Cat Skid Steer Loader was used for one of these exempt purposes the sales and use tax should be reduced on a prorated basis. Based on the Form AGQ-100 filed by Taxpayer, there was some exempt use of the Cat Skid Steer Loader and the partial exemption was granted accordingly. Taxpayer is entitled to no more.

FINDING

Taxpayer's protest is denied.

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